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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/633,135 | 07/31/2003 | James A. Mitchell | ITL.1003US (P16575) | 3092 |
| 21906 | 7590 | 05/15/2007 | | |
| TROP PRUNER & HU, PC 1616 S. VOSS ROAD, SUITE 750 HOUSTON, TX 77057-2631 | | | EXAMINER WANG, TED M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2611 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 05/15/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/633,135

Applicant(s)

MITCHELL ET AL.

Examiner

Ted M. Wang

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED on 03 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 8-10, 12-18 and 22-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation Sheet (PTOL-303)

Response to Arguments

1. Applicant's arguments, filed on 05/03/2007, with respect to claims 8-10, 12-18 and 22-25 have been fully considered but they are not persuasive. The Examiner has thoroughly reviewed Applicants' arguments but firmly believes that the cited reference to reasonably and properly meet the claimed limitations.

Claims 5, 9, 12 and 16

(1) Applicants' argument –

“The office action, at page 3 in paragraph 1, suggests that the predefined depth “is the number of data symbols stored in the buffer that is smaller than that of the predetermined maximum number.” If this were true, then the question becomes what is the predefined depth in the cited reference? Is it any number less than the maximum number? But, if this is so, then that would mean that no buffer ever reaches the maximum number, but the quote set forth in the office action from column 7, line 60 through column 8, line 1 indicates to the contrary. Namely, the buffers can exceed the asserted predetermined depth in the office action in some cases. Thus, the packets are not held until each of the buffers has that predefined depth, because sometimes the buffers have a depth in excess of the predefined depth” as recited page 4 of the remark.

Examiner's response –

In response to applicant's argument with respect to argument as recited in the above paragraph –

As addressed in the last Final Office action, dated 04/18/2007, the predetermined depth in Vila's reference is the number of the data symbols stored in the buffer that smaller than that of the predetermined maximum number (Column 7, line 60 – column 8, line 1 and Column 8, lines 9-16).

Column 8, lines 1-8, of Vila's reference teaches a worse case scenario to resolve the buffer (a particular one) being overflowed. Even the instant application will encounter same issue and has to find a way to resolve it (page 8 line 25 – page 9 line 2) that is not considered as normal operation.

(2) Applicants' argument –

“As still another way of looking at it, nothing in the reference holds the packets until each of the buffers has a predefined depth. Firstly, they can exceed the asserted predefined depth in some cases. Secondly, there is no predefined depth for each buffer. Even under the analysis asserted in the office action, the predefined depth is not any single depth, but simply less than some other depth which is inconsistent with the claim language. Each of the buffers in the cited reference may have a different number of packets and that **cannot be the same predefined depth in each buffer**” as recited page 4 of the remark.

Examiner's response –

In response to applicant's argument with respect to argument as recited in the above paragraph –

The claim limitation of “holding the data packets until each of the buffers has a predefined depth” as recited in claim 18 of the instant application does not claim that the depth value in each buffer has to be the same. It simply says that each of the buffers should have a predefined depth (It is not necessary having the same depth.)

Thus, for the explanation addressed in the above paragraph, the rejection under 35 U.S.C. 102(e) with Vila's reference is adequate.

Conclusion

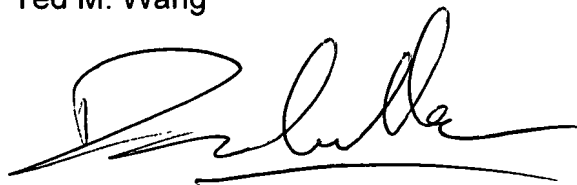
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ted M. Wang whose telephone number is 571-272-3053. The examiner can normally be reached on M-F, 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Chin can be reached on 571-272-3056. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ted M Wang
Examiner
Art Unit 2611

Ted M. Wang

A handwritten signature in black ink, appearing to read 'Ted M. Wang', with a horizontal line underneath.

DACHA
PRIMARY EXAMINER